

IP 05-1194-C K/Y Inglis v Cigna Group Ins.
Magistrate Tim A. Baker

Signed on 09/13/07

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

PHYLLISANNE INGLIS,)	
)	
Plaintiff,)	
vs.)	NO. 1:05-cv-01194-RLY-TAB
)	
CIGNA GROUP INSURANCE,)	
LIFE INSURANCE COMPANY OF NORTH)	
AMERICA,)	
)	
Defendants.)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

PHYLLISANNE INGLIS, as Trustee of the)	
DAVID M. RATTS Living Trust, Deceased,)	
Plaintiff,)	
)	
vs.)	1:05-cv-01194- RLY-TAB
)	
CIGNA GROUP INSURANCE and LIFE)	
INSURANCE COMPANY OF NORTH)	
AMERICA,)	
Defendants,)	

ORDER ON MOTION FOR LEAVE TO AMEND COMPLAINT

I. Introduction.

This matter comes before the Court on Plaintiff's motion for leave to amend complaint [Docket No. 63] filed July 16, 2007. On July 20, 2005, Plaintiff Phyllisanne Inglis, as trustee of the David M. Ratts Living Trust, brought a breach of contract claim against Defendants Cigna Group Insurance and Life Insurance Company of North America, for failure and/or refusal to promptly pay accidental death benefits to Plaintiff. [Docket No. 1, Attach. 1.] Plaintiff moves for leave to file an amended complaint pursuant to Fed. R. Civ. P. 15(a) to add a claim of bad faith under Indiana Code § 27-4-1-4.5 and to reflect the correct name of Defendant Cigna Corporation. [Docket No. 63-3 at 2-3.] Defendants contend that granting Plaintiff's motion for leave to amend complaint would result in undue delay and undue prejudice. [Docket No. 74.] Having heard oral argument on September 5, 2007, and the matter being fully briefed, the Court denies Plaintiff's motion [Docket No. 63] for the reasons set forth below.¹

¹ Plaintiff's motion for oral argument on motion to amend complaint was granted and parties presented oral arguments via telephonic conference on September 5, 2007. The Court

II. Discussion.

Leave to amend a pleading shall be “freely given when justice so requires.” Fed. R. Civ.

P. 15(a). Specifically, FRCP 15(a) provides in part:

A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.

Fed. R. Civ. P. 15(a). However, leave to amend is not automatically granted, and may be properly denied at the district court's discretion for reasons including “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.” *Foman v. Davis*, 371 U.S. 178, 182 (1962).

The denial of a motion to amend pleadings is proper if the discovery and dispositive deadlines have passed and the motion is filed near the trial date. For example, in *Alinsky v. United States*, 415 F.3d 639, 648 (7th Cir. 2005), the Seventh Circuit denied the plaintiff's motion for leave to amend when “plaintiffs’ motion came approximately three years after the start of the litigation and approximately eight months after the plaintiff completed discovery.” Further, in *Crest Hill Land Development, LLC v. City of Joliet*, 396 F.3d 801, 804 (7th Cir. 2005), the Seventh Circuit upheld the denial of the defendant's motion for leave to amend “five months after its original answer and one month after discovery had closed” in order to prevent delay and prejudice to the plaintiff, finding that new arguments or defense theories propagated

then denied Plaintiff’s motion for leave to amend by way of a brief entry. [Docket No. 100.] This entry sets forth the reasons supporting that ruling.

after the completion of discovery are wisely discouraged.

The deadline for parties to amend their pleadings passed on April 28, 2006. Additionally, the deadline to file dispositive motions passed on January 16, 2007, Defendants' deadline for expert disclosure passed on March 21, 2007, and the discovery deadline passed on April 13, 2007. Furthermore, a trial date is set for October 1, 2007.

Nevertheless, in Plaintiff's motion for leave to amend filed July 16, 2007, Plaintiff claims that leave to file an amended complaint will not cause undue delay or undue prejudice to the Defendants, is not made in bad faith, and will not be futile. [Docket No. 63 at 2]. Plaintiff further contends that additional investigation and discovery revealed information and evidence unknown to Plaintiff at the time of filing the original complaint. [Docket No. 63 at 2-3].

In response, Defendants contend that extensive and expensive medical and expert testimony has already been conducted and that discovery would have to be reopened and the trial date vacated if the motion is granted. [Docket No. 74 at 2]. Furthermore, Defendants contend that if Plaintiff had asserted the bad faith claim in her initial complaint, Defendants would have moved for summary judgment on that issue. [Docket No. 74 at 5]. Defendants argue that Plaintiff's proposed amendment will cause undue delay and undue prejudice to Defendants, as the discovery and dispositive deadlines have passed and the trial is set for October 1, 2007. [*Id.*]

In reply, Plaintiff contends that the evidence needed to prove her additional claim of bad faith did not surface until after the amendment deadline had passed. Specifically, Plaintiff points to information revealed during Plaintiff's April 19, 2007, deposition of Defendants' sole expert witness, Dr. Denton. [Docket No. 90 at 2-8]. Plaintiff also notes that on May 3, 2007, Plaintiff suggested exhumation and autopsy of the body of David M. Ratts to help determine the cause of

death, which Defendants refused. [Docket No. 90 at 8].²

Plaintiff argues that the evidence supports a claim of bad faith pursuant to Indiana Code § 27-4-1-4.5 because: (1) Defendants' expert did not reconsider his opinions after reviewing Plaintiff's information and depositions resulting in violation of Indiana Code § 27-4-1-4.5(4); and (2) Defendants refused to settle the case in the manner proposed in Plaintiff's May 3, 2007 letter,³ showing that Defendants are "not attempting in good faith to effectuate prompt, fair and equitable settlement" of the claim pursuant to Indiana Code § 27-4-1-4.5(6).

Having considered the parties' arguments, the Court finds the Defendants' position far more persuasive. The deadlines for discovery and dispositive motions have passed. Because these deadlines have passed, Defendants have lost their opportunity to conduct discovery on the proposed claim or retain an expert. Thus, Plaintiff's proposed amendment would cause undue prejudice to Defendants. Moreover, if Plaintiff's leave to amend is allowed, undue delay will result, as the October 1, 2007, trial would need to be vacated and reset.

In addition to the expiration of deadlines, Plaintiff's proposed amendment, if allowed, would be futile. An amendment is futile if the added claim would not survive summary judgment. *Wilson v. Am. Trans Air, Inc.*, 874 F.2d 386, 392 (7th Cir. 1989). Plaintiff contends that evidence revealed during discovery supports her bad faith claim, but this contention is not supportable.

² At the September 5th oral argument, Defendants' counsel further represented to the Court that Ratts' family did not want an autopsy performed on Ratts at his death.

³ Plaintiff based the proposal in her letter on the April 19, 2007, deposition of Dr. Denton, wherein Dr. Denton states that "the debate over Mr. Ratt's cause of death could still be settled by an autopsy, although it would require an exhumation." [Docket No. 90 at 5-7]. Plaintiff proposed to settle the case by exhuming Ratts' body and having the parties be bound by the results of the autopsy regarding cause of death.

First, Plaintiff notes that Dr. Denton acknowledged in his deposition that he did not reconsider his opinions. Actually, the evidence Plaintiff points to shows that Dr. Denton in fact reviewed the information provided in Plaintiff's deposition testimony. Then, when asked whether there was "[a]nything about their testimony that caused you concern about your opinions in this case or caused you to reconsider your opinions in this case," Dr. Denton replied "[n]o." [Docket No. 90 at 3].

For a claim of bad faith, Indiana Code § 27-4-1-4.5(4) requires that a party refuse "to pay claims without conducting a reasonable investigation based upon all available information." Plaintiff cannot base her bad faith claim on Dr. Denton's failure to change his mind. Dr. Denton reviewed all available information provided by Plaintiff, but was not persuaded to change his opinions. This cannot be a basis for bad faith under Indiana Code § 27-4-1-4.5(4). Furthermore, the expert is not a decision maker for Defendants. Dr. Denton acted only as a consultant to Defendants.

Second, Defendants did not act in bad faith under Indiana Code § 27-4-1-4.5(6) simply by refusing to settle the claims based on Plaintiff's proposed settlement offer to exhume Ratt's body and be bound by the autopsy results. Evidence regarding settlement negotiations is not admissible under Fed. R. Evid. 408(a)(2), so Plaintiff cannot base a bad faith claim upon Defendants' refusal to accept Plaintiff's creative settlement proposal. Therefore, Plaintiff's proposed amendment is futile. Accordingly, the Court denies Plaintiff's motion for leave to amend complaint.

As to Plaintiff's additional proposed amendment to identify Cigna Corporation as a party, it is unclear whether Plaintiff is attempting to substitute a party or add a party to the amended complaint. In Plaintiff's motion for leave to amend filed July 16, 2007, Plaintiff suggests that

Defendant, identified as Cigna Group Insurance throughout the proceeding, should have been identified as Cigna Corporation. [Docket No. 63 at 2]. However, during the oral arguments heard September 5, 2007, Defendants indicated that Plaintiff is attempting to add an entirely new party to the complaint. To the extent that it appears Plaintiff is attempting to add a new party on the eve of trial, Plaintiff's motion for leave to amend is denied.⁴

III. Conclusion.

Plaintiff's motion for leave to file an amended complaint is not well taken. Plaintiff's motion is an untimely effort to add a new claim, and perhaps even a new party, on the eve of trial after discovery is closed and other key deadlines have passed. Moreover, the bad faith claim that Plaintiff seeks to add is futile. Accordingly, for these reasons, as more fully set forth above, Plaintiff's motion for leave to file an amended complaint [Docket No. 63] is DENIED.

Dated: September 13, 2007

/s/ Tim A. Baker
Tim A. Baker
United States Magistrate Judge
Southern District of Indiana

⁴ If in fact Plaintiff can demonstrate that Plaintiff is merely attempting to properly name the Defendant, or if the parties can agree on the proper Defendant and/or how that Defendant should be named, the Court would permit such an amendment.

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